

1 Q. As is common with me, I see that you've used  
2 the word "clear."

3 A. Yes.

4 Q. That's a strong word here that you're using  
5 in this particular sentence, as opposed to  
6 the first sentence which says "should have  
7 been," this is an affirmative word, "clear."  
8 Can you show me where in GE's materials it  
9 makes clear in 2002, "that open Metal Halide  
10 fixtures should not be placed over  
11 combustible material and that either  
12 protected lamps (shrouded) or lens covers  
13 should be used in such applications."

14 A. All right. So the first part of the  
15 question has to do with, it says, "It should  
16 have been clear," the beginning of paragraph  
17 63, and then the middle of the paragraph, it  
18 says, "It was also clear." There is a  
19 distinction here. If you read the first  
20 sentence, it says, "It should have been  
21 clear to those responsible for maintaining  
22 the lights."

23 Q. Right, but I'm talking about the second.

24 A. Right. I understand that, but part of your  
25 question included the first, actually.

1                   THE WITNESS: Maybe you could read  
2                   back the question.

3   Q. It was completely unrelated.

4                   MR. CAMPBELL: Actually, you  
5                   specifically made reference to it.

6                   MR. STERN: No. I said the way  
7                   that he used it was different.

8                   MR. CAMPBELL: He is answering your  
9                   question that you put.

10   Q. I can do it again. In this third sentence,  
11       you use the word "clear." "It was also  
12       clear by 2002 that open metal Halide  
13       fixtures should not be placed over  
14       combustible materials and that either  
15       protected lamps (shrouded) or lens covers  
16       should be used in such applications." I  
17       want to know, can you show me in the  
18       materials where it was made clear, "By 2002  
19       that open metal Halide fixtures should not  
20       be placed over combustible material and that  
21       either protected lamps (shrouded) or lens  
22       covers should be used in such  
23       applications."

24   A. Sure.

25   Q. Great?

1 A. So first in the materials, essentially,  
2 catalog that describes the GE products on  
3 the page towards the end. In fact, it's the  
4 last page before the notes page. It talks  
5 about -- this is typical of the GE  
6 catalogs. They have warning notices at the  
7 end of these catalogs, and they specifically  
8 talk about the "Lamp Enclosure Type." If you  
9 look at the left column, bottom paragraph,  
10 in the middle of the paragraph, it says,  
11 "For example, if the lamp is located near  
12 combustible material or in an area which is  
13 unoccupied for extended periods, an enclosed  
14 fixture which can contain fragments of hot  
15 quartz or glass is recommended. For more  
16 information, contact your fixture  
17 manufacturer." So that is one location  
18 where a specific reference to that issue is  
19 made. I mean, I would say that, more  
20 broadly, for those supplying these kinds of  
21 fixtures and facility managers and so forth,  
22 when I say it was clear, the industry had  
23 published very broadly on this issue. You  
24 see publications starting from 1985 onwards  
25 or communications in the eighties and the

1       nineties that talk about the consequences of  
2       using S-rated lamps, when to use them and  
3       when not to use them, and you know, some of  
4       those materials we've already identified.

5       One second. I'm going to strain my eyes for  
6       a moment. So in the documents that were  
7       provided by Andrew Kuzmick to David Kuzmick,  
8       there's a caution immediately below the  
9       table here and it reads --

10      Q. You're looking at the second page of the tab  
11      number 2?

12      A. That's correct. "The following operating  
13      instructions must be complied with to help  
14      avoid possible shattering and early failure  
15      of the lamp," and it goes on to say, "Metal  
16      Halide lamps are constructed of an outer  
17      bulb with an internal arc tube made of  
18      quartz. The arc tube operated under high  
19      pressure at very high temperature as high as  
20      approximately 1100 C. The arc tube and  
21      outer bulb may unexpectedly rupture due to  
22      internal causes or external factors such as  
23      a system failure or misapplication."

24                   So the combination here of the fact  
25                   that the possibility exists associated with

1       possible shattering and the fact that the  
2       temperatures are very high, and it says that  
3       in more than one location, is in my opinion  
4       pretty clear communication that this risk  
5       does exist and appropriate measures must be  
6       taken.

7       Q. I want to go back to the rated life analysis  
8       that you told me about. If a lamp is placed  
9       inside of an enclosed fixture, the lamp's  
10      life cycle will be shorter or its median  
11      rated life will be shorter?

12      A. So we should not confuse two principles  
13      here. The cycling of the lamp, which is the  
14      duration over the period during which the  
15      lamp is on -- that's cycling, okay, and in  
16      GE testing, "cycling" specifically refers to  
17      ten-hour cycling, in which the test is such  
18      that the lamp is kept on for ten hours, then  
19      switched off for some time, then turned back  
20      on for ten hours, and so on, repeating this  
21      ten-hour cycle. So that's cycling. The  
22      rated life is a concept that has to do with  
23      the median life of lamps when they're  
24      operated under that specific test protocol.  
25      What you're asking about is, what would the

1 median life be if the lamp were now in an  
2 enclosed fixture, instead of an open  
3 fixture. Have I understood your question  
4 correctly?

5 Q. Correct.

6 A. And I've already answered that question, but  
7 I'll answer it again. What I expect --  
8 first of all, the rated life, as defined by  
9 GE. Doesn't change. The rated life is the  
10 rated life. It's 16,000 hours for this  
11 particular lamp. That's what it is. The  
12 median life, if operated in otherwise  
13 identical conditions as the test protocol  
14 used by GE, other than now placing the lamp  
15 into an enclosed fixture, I expect to have  
16 probably a small effect that would shorten  
17 the median life of a population of lamps  
18 that are tested.

19 Q. So GE got the 16,000 hours rated life on  
20 these ten-hour cycles and then in the  
21 materials here -- and you talk about  
22 operating on five-hour cycle would reduce  
23 the rated life by 75 percent --

24 A. Yes.

25 Q. -- and then we've spoken about that

1 operating a lamp at 120-hour cycle will  
2 increase the rated life by 50 percent?

3 A. GE states that in their materials, yes.

4 Q. If you operate the lamp at some cycle  
5 between ten hours and 120 hours, do you get  
6 any extra rated life; does your rated life  
7 increase at all; or it's either 120, ten,  
8 five, three, two, one?

9 A. So as GE defines it, it's ten or 120, and  
10 then the lower ones that they specifically  
11 call out in their materials.

12 Q. And in practice -- although they don't talk  
13 about it, clearly -- if you operate a lamp  
14 on a cycle between ten hours and 120 hours,  
15 does that extend the rated life, keep the  
16 rated life the same as that ten-hour, or  
17 shorten it, using the exact same test  
18 scenario that they used in the lab?

19 A. Remember, the rated life concept is one that  
20 is used for planning purposes. Okay. So if  
21 you know what your operation is going to be  
22 like, you select the lamp, on the one hand,  
23 your group relamping schedule on the other,  
24 as well as any maintenance that you may need  
25 to do based on the product you have

1 selected. Okay? So in practice, industry  
2 does not and should not operate in a manner  
3 where it does not plan ahead, but rather,  
4 asks, looking backwards, "Well, how did we  
5 use the lamps this week," and then in  
6 accordance with that, change their  
7 schedules. The way GE intends these  
8 materials to be used is, for this particular  
9 product, to look at what the rated life is  
10 and then to schedule your relamping at a  
11 duration that corresponds to the rated life  
12 or a shorter duration. For example, Andrew  
13 Kuzmick himself recommended to Metso 75  
14 percent of rated life relamping schedule.  
15 So that's how it works.

16 MR. STERN: What was my question?

17 (The previous question was read  
18 back by the court reporter.)

19 A. Rated life does not change.

20 Q. So operating a lamp on a cycle greater than  
21 ten hours and less than 120 hours will not  
22 change the rated life of that lamp?

23 A. The rated life is what GE defines it to be  
24 based on their testing. If you now go to  
25 Metso, and they're operating the lights as

1       they choose to, the rated life of that lamp  
2       hasn't changed. It's still what GE  
3       advertises. That's my answer to your  
4       question.

5       Q. Let me see if I can try and clarify this. I  
6       know what you want to say. Thank you.  
7       Let's look at -- do you see the 750 at issue  
8       in this litigation in this booklet, in tab  
9       number 8?

10      A. It's right here.

11      Q. Does it have a footnote reference?

12      A. It does.

13      Q. And the footnote reference is footnote 43?

14      A. Yes.

15      Q. If we go to look to see what footnote 43 is,  
16       can you please read footnote 43?

17      A. Yes.

18      Q. Go ahead.

19      A. "When operated on a 120-hour cycle  
20       (minimum), lamp life rating may be extended  
21       by up to 50 percent based on engineering  
22       estimates."

23      Q. So GE in this footnote is talking about  
24       extending lamp life rating. Is that any  
25       different than rated life?

1 A. Well, what they're talking about here is,  
2 when operated on a 120-hour hour cycle, at  
3 the minimum --

4 Q. Correct?

5 A. -- lamp life rating may, possibly, but  
6 that's my addition, may be extended by up  
7 to 50 percent based on engineering  
8 estimates.

9 Q. Okay. Is lamp life rating the same thing as  
10 rated life?

11 A. In this footnote 43, lamp life rating comes  
12 burdened with having to perform an  
13 engineering estimate, okay, and if you  
14 perform an engineering analysis of the lamp  
15 life rating, it may be increased when  
16 operated on a cycle longer than 120 hours.  
17 I think it's pretty clear. That's what it  
18 is.

19 Q. Is lamp life rating the same thing as rated  
20 life?

21 A. So the lamp life rating is the median  
22 population -- sorry -- the failure time at  
23 which 50 percent of the lamps cease to  
24 light.

25 Q. Is lamp light rating the same thing as rated

1 life?

2 A. Generally speaking, I can't answer that  
3 question. I can only answer it in the  
4 context of footnote 43.

5 Q. We're looking at 43.

6 A. Right. So in the context of footnote 43,  
7 yes, they are the same thing.

8 Q. So if a lamp is operating on a 120-hour  
9 cycle minimum, based upon GE's engineering  
10 estimates, the rated life of that lamp may  
11 be extended up to 50 percent; right?

12 A. Yes.

13 Q. If a lamp is operated on a 112-hour cycle  
14 minimum, can the lamp life rating be  
15 extended by any amount?

16 A. No.

17 Q. I want to show you a document we marked as  
18 Kytomaa exhibit 5. (Indicating.) Have you  
19 ever seen this document before I just handed  
20 it to you?

21 A. I have.

22 Q. When did you see this document first?

23 A. I've had these Answers to Interrogatories  
24 for some time. I don't recall when.

25 Q. Is it on disk?

1 A. Yes, it should be. Yes.

2 Q. And your report doesn't mention any of the  
3 information contained in these Answers to  
4 Interrogatories; correct?

5 A. So what I have -- sorry -- what is the  
6 question?

7 (The previous question was read  
8 back by the court reporter.)

9 A. I don't know that that's true.

10 Q. Does your report talk about the Clarks  
11 Summit facility operating from Sunday at  
12 eleven p.m. to Friday, eleven p.m. or  
13 Monday, seven a.m. to Saturday, seven a.m.?

14 A. Well, it's inconsistent with David Kuzmick's  
15 own testimony, where he specifically says  
16 that there are separate events. There's  
17 work during the week and then on occasion,  
18 there's work during the weekend.

19 Q. All right. I think we're all aware of what  
20 he testified to. That wasn't the question I  
21 asked you, though, was it. I asked you if  
22 your report talks about this statement in  
23 this answer to interrogatory.

24 MR. CAMPBELL: Which statement?

25 Q. We'll start with the first sentence. "David

1           Kuzmick of Metso Paper, Clarks Summit  
2           facility, specifically, recalls reviewing  
3           the sleeve of GE 750 watt bulbs at the  
4           Clarks Summit facility before the  
5           explosion." Does your report specifically  
6           talk about David Kuzmick reviewing the  
7           sleeve of the 750 watt bulb?

8       A. Just going from memory, I don't recall that  
9           I mentioned whether he does or doesn't in my  
10          report and I do know that Joe Saler is  
11          probably addressing issues associated with  
12          whether David Kuzmick reviewed the sleeve or  
13          not.

14      Q. And in the next sentence, "Mr. Kuzmick also  
15          confirms that prior to the explosion, the  
16          Clarks Summit facility operated from Sunday,  
17          eleven p.m. to Friday, eleven p.m.; or  
18          Monday, seven a.m. to Saturday, seven a.m."  
19          Isn't it true your report doesn't discuss  
20          that information?

21      A. Well, actually, it may, in the sense that  
22          the Monday, seven a.m. to Saturday, seven  
23          a.m. May be consistent with what I say in my  
24          report. In other words, that's not entirely  
25          inconsistent with what David said in his own

1 sworn testimony where he said that they work  
2 Monday to Friday and then sometimes on the  
3 weekends. So I would say that, to the  
4 extent that there is a break in the  
5 duration -- here, it says -- and let me  
6 quote exhibit 5 that you've put in front of  
7 me, "Mr. Kuzmick also confirms that prior to  
8 the explosion, the Clarks Summit facility  
9 operated from Sunday, eleven p.m. to Friday,  
10 eleven p.m.; or Monday, seven a.m. to  
11 Saturday, seven a.m." It doesn't here say  
12 anything about the lights being switched off  
13 and back on, while in his own sworn  
14 testimony in his deposition, he did say  
15 that. So I think that this document is not  
16 inconsistent with his sworn testimony. The  
17 only absence of clarification in his  
18 additional Supplemental Answer to  
19 Defendant's Interrogatories is that he  
20 qualifies the total period of time from  
21 Sunday to Friday or Monday to Saturday.

22 Q. How much time -- how many hours are there  
23 between Sunday, eleven p.m. to Friday,  
24 eleven p.m.?

25 A. That would be 120 hours between Sunday,

1        eleven p.m. to Friday, eleven p.m.?

2    Q. And how many hours are there between Monday,  
3        seven a.m. to Saturday, seven a.m.?

4    A. That's also 120 hours, exactly.

5    Q. And does your report anywhere speak about  
6        the Clarks Summit facility operating on a  
7        120-hour cycle?

8    A. I certainly considered it, yes.

9    Q. And does your report talk about the Clarks  
10      Summit facility actually operating on a  
11      120-hour cycle?

12     A. Well, no, because if I take this document in  
13      combination with his sworn testimony, what  
14      those two together suggest is that it might  
15      have been 120 hours, but it was broken out.  
16      So what I considered was, in light of the  
17      body of information here, is 120 hours  
18      that's broken up somewhere on the weekend.  
19      So if you take the Monday-to-Saturday  
20      sequence, it might be broken up between  
21      Friday night and Saturday morning somehow,  
22      or for a short period of time on Sunday. I  
23      don't quite know when.

24     Q. Isn't the reason why your report doesn't  
25      talk about anything on this Answer to

1           Interrogatory, Supplemental Answer to  
2           Interrogatory, because your report is dated  
3           over a month before this actual document was  
4           created?

5       A. Let's see. When was this created? That  
6           would be a reason why I don't mention it,  
7           for sure, but I've seen this document  
8           before.

9       Q. And you never supplemented, amended, or  
10          changed your report after the August 31,  
11          2010 date; correct?

12      A. No, I have not supplemented my report.

13      Q. This was plaintiff's exhibit 2. I think  
14          you'll recognize this document as being your  
15          tab number 2, just on one piece of paper;  
16          correct? (Indicating.)

17      A. Yes.

18      Q. On the first page, you see there's a box in  
19          the middle of the page where it says  
20          "Applications"?

21      A. Yes.

22      Q. And you have "Industrial Lighting,"  
23          Warehouse, Parking Areas" and "General  
24          Lighting." Do you agree that the 750 watt  
25          metal Halide bulb that is depicted in this

1       document is appropriate for those four  
2       applications?

3       A. Yes. I think there's a good picture of a  
4       perfectly good application for those lamps  
5       in this document on that page.

6       Q. Can you describe for me or explain to me how  
7       a 750 watt PulseArc Multi-vapor lamp can be  
8       in a warehouse in an open fixture and be an  
9       S-rating and not increase the risk of fire?

10      A. I'll give you some examples, but to the  
11       extent that the environment is one where  
12       there are no combustibles -- like for  
13       example, if there is a warehouse that stores  
14       bricks or metal cast components, those kinds  
15       of things -- and it is done in such a manner  
16       as to not use combustible materials, then  
17       it's perfectly reasonable -- that is, then I  
18       would say that the risk of a fire is  
19       minuscule. The same would be true in  
20       outdoor spaces. For example, in parking  
21       lots.

22      Q. Let me show you a document that was  
23       previously marked as plaintiff's exhibit 4.  
24       (Indicating.) Have you ever seen this  
25       document before today?

1 A. I have. Well, actually, I'm not sure that  
2 I've seen it as this specific exhibit, but I  
3 believe I've seen some representations of  
4 this, what's in the document before.

5 Q. What was this represented as reflecting?

6 A. Well, let me take a look. It was  
7 represented to me as representing the text  
8 that is in the -- I mean, I recognize this  
9 document. I'm not sure I understand the  
10 question.

11 Q. What is this document?

12 A. This document is a sleeve that is used for a  
13 750 watt Metal Halide lamp.

14 Q. And you get that information from the third  
15 page of the document, the bottom left-hand  
16 section?

17 A. Yes.

18 Q. Okay, and do you know what "Ballast M149"  
19 means?

20 A. It's a reference to ballast, but I don't  
21 know specifically what M149 is.

22 Q. Is M149 for an S-rated lamp or an E-rated  
23 lamp?

24 MR. CAMPBELL: Which page of the  
25 exhibit?

1                   MR. STERN: The third. The bottom  
2                   left, you'll see the label, the sticker.

3                   MR. CAMPBELL: Got it.

4     A. M149 is designated as a ballast that can be  
5                   used for S-rated. I don't know whether it's  
6                   exclusively for S-rated.

7     Q. Okay. Looking at the second page of this  
8                   document, plaintiff's exhibit 4 --

9     A. Yeah.

10    Q. -- do you see anywhere on this page  
11                   reference to explosion?

12    A. So second page, I do not see any reference  
13                   to explosion.

14    Q. How about non-passive failure, do you see  
15                   that mentioned on the second page?

16    A. I do not.

17    Q. Going to the fourth page, which has the  
18                   warning section clearer than the third  
19                   page --

20    A. Uh-huh.

21    Q. -- there is a bullet -- there is a section  
22                   called "Risk of Fire," do you see that?

23    A. Yes.

24    Q. That has two bullets; correct?

25    A. Yes.

1 Q. And only two bullets; correct?

2 A. Well, there's two sections that mention  
3 fire, the second and the fourth.

4 Q. We'll get to that. Just the "Risk of Fire"  
5 section.

6 A. Second section. Correct.

7 Q. "Keep combustible materials away from  
8 lamp."

9 A. Yes.

10 Q. Did Metso have combustible materials not  
11 away from the lamp?

12 A. Well, I mean, in light of the fact that they  
13 had combustible materials in close proximity  
14 to the lamp, that's a question that Metso  
15 themselves should have addressed.

16 Q. And how close was the --

17 A. I don't know the exact dimension; that is,  
18 the distance from the lamp to the top of the  
19 rack, but you know, it wasn't far.

20 Q. Is ten feet close proximity?

21 A. Well, if the lamp is above the combustibles,  
22 that would be close, yes.

23 Q. Is 20 feet close proximity?

24 A. I'm not sure whether 20 feet is relevant  
25 here. I think that the distance between the

1        lamp and the materials was less than 20  
2        feet, but if the lamp is generally above the  
3        combustibles, that would be close.

4        Q. How far was the lamp above the ground?

5        A. I don't know.

6        Q. When you were there in April, how far was  
7        the lamp above the ground?

8        A. I did not quantify that.

9        Q. More than 20 feet?

10      A. So the lamps were just over 20 feet above  
11       the ground at the time of my inspection and  
12       the racks were certainly well over, I would  
13       expect, ten feet or so.

14      Q. Did Metso use the lamp in a fixture rated  
15       for the lamp? I'm looking at the second  
16       bullet point.

17      A. I didn't know what you were looking at.

18      Q. I'm looking at the second bullet point of  
19       plaintiff's exhibit 4.

20      A. Yeah.

21      Q. Under the "Risk of Fire" section, we just  
22       talked about the first bullet point. The  
23       second bullet point says, "Use in fixture  
24       rated for this product." Did Metso not use  
25       the lamp in a fixture rated for this

1 product?

2 A. No. They used a fixture that was rated for  
3 this project.

4 Q. So now, jumping two sections, the section  
5 titled "Unexpected lamp rupture may cause  
6 injury, fire, or property damage," do you  
7 see that section?

8 A. Yes.

9 Q. Did Metro exceed the rated voltage of the  
10 lamp?

11 A. I have no knowledge about the voltages, so I  
12 don't know.

13 Q. Was the lamp directly exposed to water or  
14 outdoors without an enclosed fixture?

15 A. I don't believe it was.

16 Q. "Use an enclosed fixture rated for this  
17 product. See instructions." Did Metso not  
18 follow those instructions?

19 A. Well, to the extent that these instructions  
20 refer to materials that we've already  
21 reviewed in the catalog, I would say they  
22 did not follow those instructions.

23 Q. To the extent those instructions refer to  
24 the part of the labor where it says  
25 "Specified operating positions," did they

1 follow the specified operating positions for  
2 this lamp, to be used in an open fixture?

3 A. Well, it says "See instructions," all right,  
4 and so it's not clear to me that "See  
5 instructions" is what you say it is.

6 Q. So can we agree that this "See instructions"  
7 isn't really clear on what instructions  
8 they're talking about?

9 A. If I were working at the facility and I see  
10 "See instructions," I would look for any  
11 instructions that they had, and the  
12 instructions that they had were what Dave  
13 Kuzmick had.

14 Q. You wouldn't go and look right above where  
15 it says "Specified operating positions"?

16 A. No, because I don't see instructions here.  
17 The way I read this is that I need to look  
18 for instructions. "See instructions."

19 Q. So if you can turn to the second page, where  
20 it has "Specified operating positions," it  
21 says "VBU - Base up plus or minus 15  
22 degrees," that's the type of lamp that Metso  
23 had; correct?

24 A. Yes.

25 Q. And "VBD - Base down plus or minus 15

1           degrees/U - Universal," that's not what they  
2           were using; correct?

3       A. No. They had a base up.

4       Q. And then the next line, "Lamps operated in  
5           vertical position (base up or base down),  
6           plus or minus 15 degrees, can be used in an  
7           open fixture." Do you see that?

8       A. Yeah.

9       Q. Where were they operating their lamp base up  
10           within plus or minus 15 degrees?

11      A. Yes.

12      Q. Then the next sentence, "Lamp burned in any  
13           other orientation must be used in enclosed  
14           fixtures only." Were they burning it in any  
15           other orientation?

16      A. They were not.

17      Q. Okay. Do you have any information that the  
18           lamp at issue, that the outer glass was  
19           scratched or broken prior to the fire?

20      A. I have no independent information about  
21           that.

22      Q. Do you have any information that the  
23           ballast -- that Metso was not using the  
24           properly rated ballast prior to the fire?

25      A. I know they had ballast problems prior to

1           the fire, but that's all I know. The  
2           ballast did have problems.

3       Q. Do you know if it was a properly rated  
4           ballast?

5       A. I have no reason to believe that it was an  
6           improperly rated ballast.

7       Q. And the next one, "Operate lamp only in  
8           specified position," and I believe you said  
9           they did that?

10      A. Yes, that's correct.

11      Q. "Turn lamp off at least once for 15 minutes  
12           per week," and your report talks about them  
13           having done that; correct?

14      A. Correct.

15      Q. "Don't store flammable materials near/below  
16           lamp." Do you see that?

17      A. Yes.

18      Q. Does that say "in close proximity"?

19      A. It says "near/below lamp."

20      Q. Does it say "near or below lamp"?

21      A. I would read that as, "Don't store flammable  
22           materials near the lamp," and I would read  
23           it also as "Don't store flammable materials  
24           below the lamp."

25      Q. You would put an "or" there?

1 A. "And" or "or."

2 Q. "And" or "or"?

3 A. Yeah. Neither.

4 Q. So if I go back up where it says, "Do not  
5 use lamp if outer glass is scratched or  
6 broken," there they use the word "or," but  
7 here, GE did not use the word "or," and you  
8 would still put an "or" there?

9 A. I wouldn't necessarily edit it. I think  
10 it's pretty clear as it stands. That's how  
11 I interpret it.

12 Q. Okay. Next one, "Do not use beyond rated  
13 life." You believe Metso used the lamp  
14 beyond its rated life?

15 A. That's correct.

16 Q. "If used on a dimming system, see  
17 instructions." Was the lamp used on a  
18 dimming system?

19 A. No.

20 Q. So that one is not applicable; correct?

21 A. No.

22 Q. "Do not turn on lamp until fully  
23 installed." Do you have any information  
24 regarding them turning on lamp before it was  
25 fully installed?

1 A. No.

2 Q. Okay. Can you tell me where on this  
3 document, anywhere on this document, it  
4 identifies the rated life of the lamp?

5 A. This particular document does not identify  
6 the rated life of the lamp.

7 Q. Can you tell me anywhere on this document  
8 where it talks about how rated life was  
9 determined?

10 A. No. That's not the purpose of the wrapper  
11 for the lamp.

12 Q. So is the bullet, "Do not use beyond rated  
13 life" given any extra emphasis or location  
14 or any way to make it stand out from any of  
15 the other bullets on this page?

16 A. No. It's got a triangle with an exclamation  
17 mark and a heading of "Warning," but  
18 that's -- that's what it's given.

19 Q. I'm talking about the actual bullet, "Do not  
20 use beyond rated life." Is there anything  
21 about that bullet point, those words in that  
22 bullet point, that are in any way  
23 emphasized, highlighted in any way to stand  
24 out from anything else on this page?

25 A. I mean, this page is the table of

1       warnings -- it's clearly identified as  
2       that -- and within that, it's one of the  
3       warnings like the others.

4       Q. Okay. I can obviously see that. My  
5       question is: This bullet point, "Do not use  
6       beyond rated life," is there anything about  
7       that one that is highlighted, as compared to  
8       any of the others on this page?

9       A. Well, I mean, there's some that are actually  
10      highlighted more, like "Unexpected lamp  
11      rupture may cause injury, fire, or property  
12      damages," bolder than "Do not use beyond  
13      rated life."

14      Q. Is "Do not use beyond rated life" in any way  
15      emphasized, highlighted, as compared to any  
16      of the other bullet points?

17      A. No. It's the same status as most bullet  
18      points under the rubric of warnings.

19      Q. If you could turn to the last page, which is  
20      the caution section, the first caption is  
21      "Risk of burn." Do you see that?

22      A. I do.

23      Q. Okay, and that has two bullet points; right?

24      A. Yes.

25      Q. First one, "Allow lamp to cool before

1 handling." Do you have any information  
2 about Metso not allowing lamps to cool  
3 before handling?

4 A. No.

5 Q. And the second bullet point, "Do not turn  
6 lamp on until fully installed." Do you have  
7 any information about Metso turning on the  
8 lamp before it was fully installed?

9 A. I do not.

10 Q. Okay. The next section, "Lamp may shatter  
11 and cause injury if broken." Do you see  
12 that?

13 A. Yes.

14 Q. First bullet point, "Wear safety glasses and  
15 gloves when handling lamp." Do you have any  
16 information that the lamp was handled and  
17 safety glasses or gloves weren't used?

18 A. Yeah. I don't know anything about that.

19 Q. Okay, and then the next bullet point, "Do  
20 not use lamp if outer glass is scratched or  
21 broken." Do you have any information if  
22 it's outer glass was scratched or broken  
23 before the explosion?

24 A. I do not.

25 Q. The next bullet point, "Dispose of lamp in a

1       closed container." Do you have any  
2       information about Metso failing to dispose  
3       of lamp in a closed container prior to the  
4       explosion?

5                   MR. CAMPBELL: I don't think it was  
6       disposed of. Go ahead.

7       A. I think some parts of it may have been  
8       disposed and I don't know how they were  
9       disposed.

10      Q. Of the lamp?

11      A. Right. I mean, not all of the lamp was  
12       recovered.

13                   MR. CAMPBELL: He said prior to.

14      Q. Pre. I mean, this bullet point is really  
15       not applicable for us; right?

16      A. For the lamp in question, that's correct.

17      Q. Okay. Then "Do not use excessive force when  
18       installing force." Do you have any  
19       information that the lamp was installed with  
20       excessive force?

21      A. None.

22      Q. Do you see anything on any of these pages  
23       that mentions or references the word  
24       "explosion"?

25      A. I do not. I wouldn't expect it to.

1 Q. Do you see anything on any of these pages  
2 about the production of hot quartz particles  
3 in a non-passive failure?

4 A. Yeah. I mean, I think it's pretty  
5 obvious, "Unexpected lamp rupture may cause  
6 injury, fire, or property damage," anyone  
7 would know that any rupture of the lamp  
8 would involve glass or quartz particles. I  
9 don't believe that people really distinguish  
10 between glass and quartz. They are not  
11 experts in this area, but they would  
12 understand that that's what it means.

13 Q. And then anything referenced in any of these  
14 pages about that glass or quartz particles  
15 being one thousand degrees Celcius?

16 A. I think the thousand degrees Celcius, all  
17 that means to a lay person is that it's hot,  
18 and I think that this entry communicates  
19 that pretty clearly. There's no question in  
20 my mind.

21 Q. Can you turn back to the second page,  
22 please. If you look at the left-hand  
23 column -- it might be easier on the third  
24 page on the top left, that last section  
25 called "Warning" on the second page, bottom

1 left?

2 A. I see, yeah. Okay.

3 Q. The first sentence, "This lamp can cause  
4 serious skin burn and eye inflammation from  
5 short wave ultraviolet radiation if outer  
6 envelope of the lamp is broken or punctured  
7 and the arc tube continues to operate." Do  
8 you see that?

9 A. I do.

10 Q. Anything in this warning about the flying  
11 pieces of hot quartz, flying particles of  
12 hot quartz?

13 A. Not in that warning. Only in the later  
14 warning that we've already discussed.

15 MR. STERN: Let's break.

16 (Recess.)

17 Q. Let me show you a document that was  
18 previously marked as plaintiff's exhibit  
19 12. (Indicating.) Have you ever seen this  
20 document before now?

21 A. I may have. I don't specifically recognize  
22 it, but I may have seen it before.

23 Q. So let me just take you to the first page,  
24 second full paragraph, the last sentence,  
25 where it says, "The second is more

1           interesting in that it basically states that  
2           open burning should not be employed if there  
3           is anything combustible in the vicinity  
4           which is essentially an admission that the  
5           lamp has a tendency to fail non-passively at  
6           some none quantified rate and possesses an  
7           ROF when it does so." Do you see that  
8           sentence?

9       Q. And looking back at exhibit 4, the labeling  
10      that we just looked at --

11      A. Yes.

12      Q. -- do you see it mentioned anywhere that the  
13      lamp should be not burned in an open fixture  
14      or that there should be no combustibles in  
15      the vicinity of the lamp?

16      A. So is your question, does the exhibit that  
17      we just looked at talk about this?

18      Q. Correct.

19      A. It says, "Do not store flammable materials  
20      near/below lamp." It's pretty clear, so I  
21      guess it does talk about that.

22      Q. Does it use the word "vicinity"?

23      A. It says "near/below." I'd say that pretty  
24      much is the same meaning.

25      Q. Do you see the word "vicinity"?

1 A. I see the word "vicinity" on exhibit 12.

2 Q. Yes. I'm sorry. I meant on the packaging,  
3 exhibit 4.

4 A. No, I don't see "vicinity."

5 Q. Fantastic. Now, if you could turn to the  
6 second page of plaintiff's exhibit 12.  
7 Please read the document and let me know  
8 when you're done.

9 A. Okay.

10 Q. Do you see in the center of the page, "We  
11 should take this meeting as an opportunity  
12 to minimize future GEL liability by  
13 proposing that industry via NEMA re-assess  
14 this situation, move forward in a  
15 deliberate, but planned fashion to recommend  
16 that," and then there are three numbered  
17 paragraphs? Do you see that section?

18 A. I see that.

19 Q. And the first numbered paragraph says, "All  
20 MH lamps be used in enclosed fixtures,  
21 unless they are rated suitable for use in  
22 open fixtures." Is that referring to an  
23 E-rated lamp?

24 A. So --

25 Q. The first part. Is that related to an

1           E-rated lamp?

2       A. Well, it doesn't really refer to any lamp.

3           It just says that lamp be used in enclosed  
4           fixtures.

5       Q. And then the second numbered paragraph,

6           "Lamps rated suitable for use in open  
7           fixtures must be certified by the  
8           manufacturer to pass the ANSI  
9           containment test (manufacturer  
10           self-certification/verification)." Now, is  
11           that talking about an O-rated lamp?

12      A. Yes. This sounds like an O-rated lamp, yes.

13      Q. So the first numbered paragraph is saying  
14           that all Metal Halide lamps should be used  
15           in enclosed fixtures unless rated suitable  
16           for use in open fixtures, and the second  
17           numbered paragraph says, if the lamp is  
18           rated suitable for an open fixture, it's got  
19           to be an O-rated lamp. Did I read that  
20           right?

21      A. No. It doesn't say that. It just says that  
22           the -- the second bullet says that lamps  
23           rated suitable for use in open fixtures must  
24           be certified. Basically, there's a  
25           requirement for certification by the

1 manufacturer to pass the ANSI containment  
2 test. Are you aware that that relates to  
3 O-certification?

4 A. The specific reference is to the containment  
5 test, though. In fact, nowhere does it say  
6 "O-certification" in that particular  
7 bullet. By way of inference, I would say  
8 yes. I mean, there's a consistency between  
9 O-certification and item 2.

10 Q. Can item 2 refer to an S-rated lamp?

11 A. No. It specifically talks about lamps rated  
12 suitable for the use in open fixtures.

13 Q. Item number 2. Can that be an S-rated lamp?

14 A. No. It specifically says, "lamps rated  
15 suitable for use in open fixtures."

16 Q. Isn't an S-rated lamp suitable for use in an  
17 open fixture?

18 A. Well, this item talks about the  
19 certification by the manufacturer to pass  
20 the ANSI containment test, which is a --  
21 it's a test having to do with the  
22 containment structure in a lamp. So by  
23 inference, I would interpret this item 2 as  
24 not referring to S-rated lamps because, in  
25 the second part of the sentence, where there

1       is a reference to the containment test, you  
2       tend not to put an S-rated lamp through a  
3       containment test.

4       Q. Are you aware that, in February of 1999,  
5       GE's NEMA representative was internally  
6       recommending to GE not to allow S-rated  
7       lamps in open fixtures any longer?

8       A. What he was doing is asking that --

9       Q. Well --

10      A. I mean, I can read --

11                    MR. CAMPBELL: Excuse me. Let him  
12                    finish.

13      Q. He says "recommending." So I just want to  
14           clarify. You used the word "asking," but he  
15           said "recommending."

16                    MR. CAMPBELL: Finish your answer,  
17                   please.

18      A. He's saying that they should re-assess the  
19           situation, move forward in a deliberate, but  
20           planned fashion. Basically, it's a  
21           proposal.

22      Q. In February of 1999?

23      A. To re-assess the situation, that's correct.

24      Q. And the situation is not to allow S-rated  
25           lamps in open fixtures?

1 A. So this is a memo that talks about  
2 re-assessing the situation and it talks  
3 about these three items.

4 Q. And these three items, in re-assessing the  
5 situation, is not allowing S-rated lamps in  
6 open fixtures; correct?

7 A. So actually, it doesn't specifically state  
8 that. What he does talk about is that, "All  
9 MH lamps be used in enclosed fixtures unless  
10 they are rated suitable for use in open  
11 fixtures." So what that means is -- common  
12 parlance is, item one is, enclose the  
13 fixtures or use O-rated fixtures. The  
14 second talks about lamps for open fixtures  
15 have to be certified in accordance with a  
16 certain standard associated with a  
17 containment, and the third has to do with  
18 listing with containment protection, unless  
19 the fixture is specified and labeled to be  
20 used only with lamps that are labeled  
21 suitable for use in open fixtures. I mean,  
22 I think the sections speak for themselves  
23 and they're a little bit of a mouthful.

24 Q. So do these sections speak about, at this  
25 point in time, GE's NEMA representative

1        recommending that GE go back to NEMA and  
2        suggest that they re-assess that S-rated  
3        lamps no longer be used in open fixtures?

4        A. I don't see that stated anywhere here. So  
5        let me look at the document more fully.

6        Q. Fair enough. Take your time.

7        A. Okay. All right. So what was the  
8        question?

9        Q. Is his recommendation that S-rated lamps not  
10      be used in an open fixture?

11      A. All right. So what this document talks  
12      about is, in that section very specifically  
13      is, "Venture has indicated a strong interest  
14      in discussing this issue," and that also,  
15      the chairman of NEMA has put the subject on  
16      the agenda on the next NEMA Lamp Section  
17      meeting, and then the author of this  
18      document considers it an opportunity to  
19      minimize GE lighting liability, and so  
20      essentially, you know, I think the way this  
21      reads clearly is that it is not a proposal  
22      or recommendation. It is a recommendation  
23      for an agenda item in a meeting for subjects  
24      of discussion.

25      Q. Is the author of this memo recommending that

1       GE take the position to NEMA that S-rated  
2       lamps not be used in open fixtures?

3       A. This document identifies that as an agenda  
4       item for discussion.

5       Q. That being what?

6       A. Items 1, 2 and 3, that is what you've  
7       just --

8       Q. That an S-rated lamp not be used in an open  
9       fixture?

10      A. I can read 1, 2, and 3 with you again, if  
11       you'd like.

12      Q. Does the label in number 4 use the word  
13       "vicinity" anywhere?

14      A. It says "near" --

15      Q. The question is: Does it use the word  
16       "vicinity"?

17      A. It says "near and below."

18      Q. "Near and below," to you is the same as  
19       "vicintiy"?

20      A. Practically speaking, yes.

21      Q. These three paragraphs, are they the same  
22       as, practically speaking, not using an  
23       S-rated lamp in an open fixture?

24      A. It is a proposal for an agenda item to have  
25       a discussion to re-assess the situation.

1           That's correct. That's what this is.

2   Q. What, not to use an S-rated lamp in an open  
3       fixture?

4   A. Well, actually, it's to -- that, "All Metal  
5       Halide lamps be used in enclosed fixtures,  
6       unless they're rated suitable for use in  
7       open fixtures. 2. "Lamps rated suitable  
8       for use in open fixtures must be certified  
9       by the manufacturer to pass the ANSI  
10      containment test (manufacturer  
11      self-certification/verification). 3. UL  
12      should require that all MH fixtures be  
13      listed with containment protection unless  
14      the fixture is specified and labeled to be  
15      used only and labeled to be used only with  
16      lamps that are labeled suitable for use in  
17      open fixtures."

18           I don't know whether Ed Yandek --  
19       and to the extent that he's been deposed --  
20       I have not reviewed his deposition -- what  
21       he meant, other than what I've just stated.

22   Q. So now, the person that created the label in  
23       exhibit 4, you didn't read that person's  
24       transcript, the person that created that  
25       label wording; did you?

1 A. I don't recall.

2 Q. Did you ever read any transcripts of any GE  
3 employees that were involved in labeling?

4 A. I haven't reviewed that. I mean, I would  
5 have expected Joe Saler to review those.

6 Q. But you didn't?

7 A. I did not.

8 Q. So you were able to make the jump from  
9 "vicinity" to "near/below," but in this  
10 circumstance, you're not willing to make the  
11 jump that what this person is talking about  
12 is not using an S-rated lamp in an open  
13 fixture?

14 A. I think it's very simple. In the context of  
15 "vicinity," "near" and "below," I think in  
16 the context of this application, the meaning  
17 of those words is very clear and I think  
18 unambiguous to pretty much anyone. Okay?  
19 Here, in this particular document, this is a  
20 proposal to follow up on an interest by a  
21 company called Venture and the interest of  
22 Osram Sylvania to introduce an agenda item  
23 to discuss a certain recommendation. That's  
24 what that is.

25 Q. I'm not leaving the topic until I get my

1 question answered.

2 A. Okay.

3 MR. CAMPBELL: I just want to point  
4 out that, at six o'clock, it's seven hours.

5 THE WITNESS: I've got an eight  
6 o'clock flight.

7 MR. STERN: If I have to continue  
8 the deposition and seek an order to do so  
9 from the Court to do so, i will. I'm okay  
10 to do that. It's up to you.

11 MR. CAMPBELL: It's limited to  
12 seven hours.

13 MR. STERN: I understand. So what  
14 I'm saying, if you'd like me to make an  
15 order and we'll come back, I'll do it, or  
16 we can continue.

17 MR. COOPER: You may or may not  
18 continue --

19 MR. STERN: That's true. The judge  
20 may not allow it. That's true.

21 MR. CAMPBELL: He's got a plane, so  
22 he's got to leave at six.

23 MR. STERN: This doesn't help get  
24 it done.

25 MR. COOPER: Well, it doesn't help

1           to ask the same questions because you're not  
2           satisfied --

3                    MR. STERN: That's correct.

4                    MR. CAMPBELL: Stop, stop. Mr.  
5                   Wolfe made it clear that the seven-hour  
6                   limit applied to the deposition, so --

7                    MR. STERN: If that's what you're  
8                   doing for this deposition, it's your  
9                   decision.

10                  MR. CAMPBELL: That is what I'm  
11                  doing.

12                  MR. STERN: As I said, I'll seek an  
13                  order from the Court to continue the  
14                  deposition.

15       Q. Asking the question and still waiting for  
16                  the answer, is Mr. Yandek stating in  
17                  paragraphs 1 and 2 that an S-rated lamp  
18                  should not be used in an open fixture?

19                  MR. CAMPBELL: That's about the  
20                  third or fourth time you've asked the same  
21                  question. He's answered it to the best of  
22                  his ability. Answer it again, but you're  
23                  wasting your time.

24                  MR. STERN: I'm going to keep going  
25                  because we all know he hasn't answered it.

1                   MR. CAMPBELL: No, we don't. He  
2 has. You don't like the answer.

3                   MR. STERN: He hasn't answered it.

4                   MR. CAMPBELL: Yes, he has. He  
5 absolutely has. So go ahead and answer it  
6 again.

7                   MR. STERN: He hasn't answered it.

8                   MR. CAMPBELL: Yes, he has.

9       A. Okay. So the letter specifically on the  
10      page with Bates number L099 GE 001419, under  
11      the title "The Industry," talks about  
12      Venture's interest in discussing this issue,  
13      which is then later described, the fact that  
14      the chairman of the NEMA Lamp Section, who  
15      is with Osram Sylvania, has put the subject  
16      on the agenda of the next NEMA Lamp Section  
17      meeting in May, and that Ed Yandek, under  
18      those circumstances, says that this  
19      meeting -- that, "We should take this  
20      meeting as an opportunity to minimize future  
21      GEL liability by proposing that industry,  
22      via NEMA, re-assess this situation and move  
23      forward in a deliberate, but planned fashion  
24      to recommend that," and so there are three  
25      items that he, through this letter, puts

1       into essentially a proposal for a topic of  
2       discussion with all of the entities that  
3       have been identified, and --

4       Q. As my question just said -- I don't know  
5       what part of the question wasn't clear --  
6       just looking at those numbered paragraphs,  
7       Mr. Yandek is saying an S-rated lamp  
8       shouldn't be used in an open fixture;  
9       correct?

10                   MR. CAMPBELL: Objection to the  
11          form of the question. He's already answered  
12          that now for the fourth time. He'll answer  
13          it again, but your time is running out.  
14          Excuse me. He didn't write the document.  
15          Mr. Yandek wrote the document. You're  
16          asking him a question about what Mr. Yandek  
17          meant by the words. He's reading the words  
18          and answering the question as best he can  
19          under the circumstances. Answer it again,  
20          please.

21       A. There is no entry or any reference to  
22       S-rated lamps.

23       Q. "All MH lamps be used in enclosed  
24       fixtures." What does Mr. Yandek mean by  
25       that?

1                   MR. CAMPBELL: Object to the form  
2                   of the question. Don't speculate as to what  
3                   Mr. Yandek means.

4                   MR. STERN: I'll rephrase the  
5                   question.

6   Q. When Mr. Yandek says, "All MH lamps be used  
7       in enclosed fixtures," do you take that to  
8       mean that MH lamps can be used in open  
9       fixtures?

10   A. Yes.

11   Q. How?

12   A. And he explains --

13   Q. I didn't ask the rest of the sentence.  
14       Listen to the question.

15                   MR. CAMPBELL: You just asked him  
16       how. That is a question.

17                   MR. STERN: No. I just asked about  
18       those words.

19                   MR. CAMPBELL: No, no. You said  
20       "How."

21                   MR. STERN: Yeah, for those words.

22                   MR. CAMPBELL: You said "How." So  
23       tell him how, please.

24   A. So the way Mr. Yandek specifically suggests  
25       how is, unless they are rated suitable for

1       use in open fixtures.

2   Q. Okay. So the first part of the sentence  
3       says you cannot use anything in an open  
4       fixture; correct?

5   A. It says, "All Metal Halide lamps be used in  
6       enclosed fixtures." I think that's very  
7       clear.

8   Q. So Metal Halide lamps cannot be used in open  
9       fixtures, for the first part of the  
10      sentence.

11   A. Correct.

12   Q. And the second part of the sentence has a  
13       clarification to the first part of the  
14       sentence; correct?

15   A. Well, it says --

16   Q. Correct?

17   A. Yes.

18   Q. Okay. We can be done quicker.

19                    MR. CAMPBELL: We can if you'd stop  
20       using those type of idiotic prefaces to your  
21       questions.

22   Q. Bullet point number 2 clarifies or defines  
23       what the "unless" is; correct?

24   A. It makes reference to a potentially new  
25       standard, I believe. So it's sort of a new

1           subject of discussion having to do with  
2           having to be certified by the manufacturer  
3           to pass the ANSI containment test, and  
4           there's a clarification to that,  
5           "(manufacturer  
6           self-certification/verification)." I don't  
7           know the details of that, but it's a topic  
8           that is much richer than item number 1.

9       Q. Do you not understand bullet point number 2  
10      to be referring to an O-rated lamp?

11      A. It talks about lamps rated suitable for use  
12      in open fixtures and the fact that they  
13      should be certified by the manufacturer to  
14      pass the ANSI containment test, yes.

15      Q. Is that an O-rated lamp?

16      A. So an O-rated lamp is a lamp rated suitable  
17      for use in open fixtures, and it talks about  
18      certification, and exactly what Mr. Yandek  
19      meant by the certification, I don't know. I  
20      don't know whether at the time it was a new  
21      standard, an evolving standard, or a  
22      standard that he felt needed to be addressed  
23      in some fashion. I have no idea what he  
24      meant there.

25      Q. Is it the part where he says the ANSI

1       containment test; that's the part you don't  
2       understand?

3       A. Well, the fact that it should be certified  
4       by the manufacturer to pass the ANSI  
5       containment test. The fact that he proposes  
6       that lamps rated suitable for use in open  
7       fixtures -- and I assume that that's O-rated  
8       lamps -- should be certified in accordance  
9       with the ANSI containment test, the fact  
10      that he suggests that as an agenda item sort  
11      of raises questions in my mind as to why is  
12      it and what is it that Mr. Yandek is  
13      thinking. There's probably something here  
14      that I don't know about, as a matter of  
15      background. I have no idea what he's  
16      thinking.

17      Q. So you don't have all the information  
18      necessary to reach an opinion as to whether  
19      Mr. Yandek is talking about here not  
20      allowing S-rated lamps to be in open  
21      fixtures?

22      A. The point I'm making is that I don't  
23      understand what the item 2 is about, what  
24      the context of item 2 is.

25      Q. No. I understand that. I understand you

1       don't understand the context of number 2.

2       What I asked was: Do you not have enough  
3       information to determine if Mr. Yandek is  
4       speaking about here not allowing S-rated  
5       lamps in open fixtures?

6       A. Item 1 is an agenda item that he feels  
7       should be discussed by the industry  
8       regarding all MH lamps being used in  
9       enclosed fixtures, unless they're rated  
10      suitable for use in open fixtures. That's  
11      all it's saying.

12      Q. And that part would bring you to the second  
13      one; correct?

14      A. Yeah.

15      Q. Is the second numbered paragraph really the  
16      definition of what he had in quotes in the  
17      first sentence?

18                    MR. CAMPBELL: Objection to the  
19                    form of the question. Don't speculate as to  
20                    what he was thinking about.

21      Q. Do you understand the second sentence to be  
22                  the defining of the words that are in the  
23                  first sentence in quotes?

24      A. Look, if it was as straightforward as that,  
25                  it wouldn't be an agenda item that he is

1 proposing. I don't know why he wants the  
2 entire industry to discuss this. If it was  
3 a simple as you suggest, the industry would  
4 not need to discuss it.

5 Q. That's better. Thank you. We previously  
6 marked as plaintiff's exhibit 14 a  
7 document. You can take a look at that.  
8 (Indicating.) Have you ever seen this  
9 document before I just handed it to you?

10 A. I believe I've seen something like this,  
11 yes.

12 Q. Do you see the date at the bottom of this  
13 document, bottom left-hand section?

14 A. October, 2008.

15 Q. Okay. So in looking at this document, does  
16 it reflect that, as of October 2008, GE was  
17 only selling the 750 watt lamp with an  
18 E-rating?

19 A. Yes.

20 Q. And do you know why GE, as of October, 2008,  
21 was only selling the 750 watt lamp with an  
22 E-rating?

23 A. My understanding is that it simply had to do  
24 with a harmonization of their offerings in  
25 the context of the market and what other

1        lamp manufacturing companies were doing. So  
2        obviously, the way that you present your  
3        products has to do with, on the one hand,  
4        the competition, and the other, the demand,  
5        but also, what the total -- that is, what  
6        your sales are of one product in relation to  
7        another. I don't have any knowledge of what  
8        was going on there, so I can't really tell  
9        you.

10      Q. Do you know what change was made to the arc  
11       tube, if any?

12      A. I don't know of any changes.

13      Q. Do you know of any changes that were made to  
14       the outer glass?

15      A. I don't know.

16      Q. Do you know of any changes made to any part  
17       of the lamp?

18      A. I don't believe that any changes were made.

19      Q. Let me show you a document that was  
20       previously marked as plaintiff's exhibit  
21       16. (Indicating.) If you could take a  
22       quick look at that document.

23      A. Yeah.

24      Q. Have you ever seen this document before  
25       now?

1 A. I don't recall seeing this document before.

2 Q. Were you aware that a GE nuclear facility  
3 had an NPF of a 400 watt MVR before now?

4 A. I had seen mention of it.

5 Q. In materials that were contained on Kytomaa  
6 exhibit 7, 8, or 9?

7 A. Yes.

8 Q. Okay, and you mentioned earlier that there  
9 were -- you did -- you looked at -- what's  
10 it called -- National Fire Incident  
11 Reporting System Data, and that's one of the  
12 exhibits in your binder, exhibit 7, your  
13 data that was summarized?

14 A. Yes.

15 Q. And is this incident, which is a 1990  
16 incident, included in that National Fire  
17 Incident Reporting System database?

18 A. So this looks like a 1999 event.

19 Q. Yes.

20 A. Based on the dates, and I don't know  
21 specifically whether this event is in the  
22 database.

23 Q. And there was also an NFPA document you had  
24 showed us that was dated in 2001. Was this  
25 incident included in that NFPA document?

1 A. I don't know whether this event was reported  
2 or not.

3 Q. In reviewing this exhibit, looking at the  
4 second page, do you see the "Causes"  
5 section?

6 A. I do.

7 Q. It says "Wrong lightbulb for this specific  
8 application. i.e., not designed for  
9 continuous operation"?

10 A. Yes.

11 Q. Do you see the next bullet point,  
12 "Manufacturer recommends turning light off  
13 for 15 minutes a week, not routinely done"?

14 A. Yes.

15 Q. And then finally, "Light fixture not  
16 designed for this bulb"?

17 A. I see that.

18 Q. And then "Lessons Learned" section says,  
19 "Make sure equipment use is consistent with  
20 all manufacturer's recommendations." Do you  
21 see that conclusion or that "Lessons  
22 Learned," as the author of that document?

23 A. I do.

24 Q. Then do you see, going down two more pages,  
25 what appears to be presumably the

1           applicable label for that 400 watt?

2   A. Yes.

3   Q. And does that label talk about the specific  
4       application of that 400 watt?

5   A. It's very hard to read.

6   Q. From reading the second page, the causes,  
7       "Wrong lightbulb for this specific  
8       application, not designed for continuous  
9       operation," and then "Manufacturer  
10      recommends turning light off for 15 minutes  
11      a week, not routinely done" -- if you  
12      look -- it appears clearer later on. The  
13      labeling is repeated again.

14   A. Okay.

15   Q. It's much clearer in the next --

16   A. Okay, yes.

17   Q. So do you see where it talks about the 15  
18      minutes right there in the middle, the  
19      bullet points?

20   A. I don't.

21   Q. One, two, three, fourth bullet point.

22   A. Yes, I see that.

23   Q. And do you see "MVR 400/U"? Do you know  
24      what the "U" means?

25   A. It's the operating position.

1 Q. What does "U" stand for?

2 A. It stands for "universal" burning position.

3 Q. In reading these materials, did GE's nuclear  
4 facility not follow the labeling? Is that  
5 what this person is saying in the "Causes"  
6 and "Lessons Learned" section?

7 A. No. I think what he's saying is that, when  
8 the lamp was specified for the application  
9 and when the fixture was selected for this  
10 particular application, they were aware of  
11 what this facility was doing, and in fact,  
12 as reflected by an e-mail, and that the  
13 selection of the lamp and the fixture were  
14 not the correct selection. So that kind of  
15 information is not information that you  
16 derive from the wrapper of the lamp. It's  
17 information that you derive from the catalog  
18 when you make the selection in the first  
19 place.

20 Q. If you look at the first bullet point, it  
21 says, "Wrong lightbulb for this specific  
22 application, i.e., not designed for  
23 continuous operation." Then when you look  
24 at the wrapper, it says, "In continuously  
25 operating systems, 24 hours per day, seven

1       days per week, turn lamps off once per week  
2       for at least 15 minutes. Failure to comply  
3       increases the risk of rupture." So the  
4       wrapper does talk about what happens or what  
5       you need to do when you continuously operate  
6       the lamp. You need to turn it off for 15  
7       minutes per week; right?

8       A. Right. I guess, that's the -- did they know  
9       that they couldn't turn lights off 15  
10      minutes per week and it was a selection that  
11      was made, or the communication did not occur  
12      between the people who specified the lamp to  
13      the operating people that they should switch  
14      the lights off, and it seems that a  
15      communication did occur in a sense that,  
16      whenever the lamps were replaced, the  
17      information was there on the wrapper to  
18      communicate to the people that the lights  
19      should be turned off for 15 minutes every  
20      week.

21      Q. And then it says, the second bullet point,  
22      "Manufacturer recommends turning light off  
23      for 15 minutes per week, not routinely  
24      done." Do you see that?

25      A. Yes.

1 Q. So the operator wasn't following that  
2 instruction; correct?

3 A. That's correct.

4 MR. CAMPBELL: You are now five  
5 minutes over.

6 MR. STERN: It's up to you.

7 MR. CAMPBELL: We're done.

8 (Whereupon, at 6:11 p.m., the  
9 deposition was suspended.)

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1 DEPONENT'S ERRATA SHEET

2 AND SIGNATURE INSTRUCTIONS

3 The original of the Errata Sheet

4 has been delivered to Atty. Campbell.

5 When the Errata Sheet has been  
6 completed by the deponent and signed, a copy  
7 thereof should be delivered to each party of  
8 record and the ORIGINAL delivered to Atty.

9 Stern, to whom the original deposition  
10 transcript was delivered.

11

12

13 INSTRUCTIONS TO DEPONENT

14

15 After reading this volume of  
16 your deposition, indicate any corrections or  
17 changes to your testimony and the reasons  
18 therefore on the Errata Sheet supplied to  
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22 REPLACE THIS PAGE OF THE TRANSCRIPT WITH THE  
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24 RECEIVED.

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1 ATTACH TO DEPOSITION OF: HARRI K. KYTOMAA  
2 CASE: Metso Paper vs. GE  
3

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5 INSTRUCTIONS: After reading the transcript  
6 of your deposition, note any change or  
7 correction to your testimony and the reason  
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8 marks or notations on the transcript volume  
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Refer to Page 257 of the transcript for  
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9 Page Line

10 \_\_\_\_\_ CHANGE: \_\_\_\_\_  
11 \_\_\_\_\_ REASON: \_\_\_\_\_  
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19 \_\_\_\_\_ REASON: \_\_\_\_\_

20 I have read the foregoing transcript of  
my testimony, and except for any corrections  
or changes noted above, I hereby subscribe  
to the transcript as an accurate record of  
the statements made by me.

21 Signed under the pains and penalties of  
perjury this \_\_\_\_\_ day of \_\_\_\_\_,  
22 2011.

23  
24  
25

HARRI K. KYTOMAA

1 CERTIFICATE

2 COMMONWEALTH OF MASSACHUSETTS

3 MIDDLESEX, SS.

4 I, Denise M. Rae, a Certified  
5 Shorthand Reporter and Notary Public duly  
6 commissioned and qualified within and for  
7 the Commonwealth of Massachusetts, do hereby  
8 certify:

9 That HARRI K. KYTOMAA, the witness  
10 whose deposition is hereinbefore set forth,  
11 was duly sworn by me, and that such  
12 deposition is a true record of the testimony  
13 given by the witness to the best of my  
14 skill, knowledge, and ability.

15 IN WITNESS WHEREOF, I have hereunto  
16 set my hand and my affixed notarial seal  
17 this 30th day of January, 2011.

18

19

---

20 Denise M. Rae

21 Notary Public

22

23 My commission expires:

24 January 21, 2016.

25

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